

REMARKS

This Amendment and Request for Reconsideration is submitted in response to an outstanding Office Action dated November 2, 2007, the shortened statutory period for having expired on February 2, 2008. Accordingly, a petition for an extension of time and associated fee is included.

I. Status of the Claims

Please cancel claims 1-39, and 51-56 without prejudice. Please amend claim 40 as indicated above. Claims 40 - 50 remain pending in the application. Claims 42-46 were previously withdrawn from consideration. Claim 40 is an independent claim.

Applicant acknowledges the Examiner's citation of statutory authority as a basis for claim rejections.

II. Rejections under 35 U.S.C. § 101

The Examiner has rejected claims 40, 41 and 47-50 under 35 U.S.C. § 101 as directed to non-statutory subject matter. The Examiner states that the claims do not describe a process of manufacture or a process for the alteration of a composition of matter. The Examiner states that the claimed process is a mental process "because the process of the method claim does not use any apparatus and therefore the claims seek to patent the use of human intelligence (or abstract idea) in and of itself."

Applicant respectfully submits that a method, performed without use of any apparatus may constitute statutory subject matter and that the case law and Patent Office guidance cited by the Examiner do not stand for the proposition that a method alone is non-statutory. However, to advance the claims to allowance, Applicant has amended claim 40 to

recite (emphasis added): A financial method performed at least partially on a programmed computer for issuing an exchangeable security that is traded in a secondary market on a securities exchange and that is related to an underlying security, the method comprising: determining a price of the underlying security at a first time; calculating a discounted price of the underlying security as a discount from the price of the underlying security at the first time; and issuing the exchangeable security at the first time and at the discounted price for trading in the secondary market on the securities exchange, the exchangeable security including an exchange right on or after a second time, where under the exchange right, a holder of the exchangeable security may exchange a share of the exchangeable security for a share of the underlying security, the second time after the first time.

Claims 41, and 47-50 depend from claim 40 and therefore include all the limitations of claim 40. Accordingly, Applicant respectfully submits that the amended claims overcome the rejection under 35 U.S.C. § 101 and ask that the rejection be withdrawn.

Applicants submit that because claim 40 as amended is clearly allowable, rejoinder of previously withdrawn claims 42-46, which depend from claim 40, is also proper and will require no additional search or Examination. Accordingly, Applicant requests rejoinder, examination and allowance of claims 42-46 in the current application.

III. Request for Reconsideration

Applicants respectfully submit that the claims of this application are in condition for allowance. Accordingly, reconsideration of the rejection and allowance is requested. If a conference would assist in placing this application in better condition for allowance, the undersigned would appreciate a telephone call at the number indicated.

PATENT
Docket No.: 36287-00700

Respectfully submitted,
Milbank, Tweed, Hadley & McCloy, L.L.P.



Chris L. Holm
Reg. No.: 39,227

February 28, 2008

Milbank, Tweed, Hadley & McCloy LLP
601 south Figueroa St, 30th Floor
Los Angeles, CA 90017

(213) 892-4000 / (213) 629-5063 (facsimile)

LAI:#6374047